



6450-01-P

DEPARTMENT OF ENERGY

[Case Number 2020-013; EERE-2020-BT-WAV-0027]

Energy Conservation Program: Decision and Order Granting a Waiver to Hercules, a Senneca Holdings Company, from the Department of Energy Walk-in Cooler and Walk-in Freezer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notification of decision and order.

SUMMARY: The U.S. Department of Energy (“DOE”) gives notification of a Decision and Order (Case Number 2020-013) that grants to Hercules, a Senneca Holdings company, (“Hercules”) a waiver from specified portions of the DOE test procedure for determining the energy consumption of specified walk-in cooler and walk-in freezer door (“walk-in door”) basic models. Under the Decision and Order, Hercules is required to test and rate the specified basic models of its walk-in doors in accordance with the alternate test procedure set forth in the Decision and Order.

DATES: The Decision and Order is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for walk-in cooler and walk-in freezer doors located at title 10 of the Code of Federal Regulations (“CFR”), part 431, subpart R, appendix A that addresses the issues presented in this waiver. At such time, Hercules must use the relevant test procedure for this equipment for any testing to demonstrate compliance with the applicable standards, and any other representations of energy use.

FOR FURTHER INFORMATION CONTACT:

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Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC-33, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585-0103. Telephone: (202) 586-8145. Email: *Michael.Kido@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

In accordance with section 431.401(f)(2) of Title 10 of the Code of Federal Regulations (10 CFR 431.401(f)(2)), DOE gives notification of the issuance of its Decision and Order as set forth below. The Decision and Order grants Hercules a waiver from the applicable test procedure at 10 CFR part 431, subpart R, appendix A for specified basic models of walk-in doors, and provides that Hercules must test and rate such equipment using the alternate test procedure specified in the Decision and Order. Hercules's representations concerning the energy consumption of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy consumption of this equipment. (42 U.S.C. 6314(d))

Manufacturers not currently distributing equipment in commerce in the United States that employ a technology or characteristic that results in the same need for a waiver from the applicable test procedure must petition for and be granted a waiver prior to the distribution in commerce of that equipment in the United States. 10 CFR 431.401(j). Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 431.401.

Case # 2020-013
Decision and Order

I. Background and Authority

The Energy Policy and Conservation Act, as amended (“EPCA”),¹ authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C² of EPCA established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency for certain types of industrial equipment. These types of equipment include walk-in coolers and walk-in freezers, the focus of this document. (42 U.S.C. 6311(1)(G))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316(a); 42 U.S.C. 6299).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

¹ All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116-260 (Dec. 27, 2020).

² For editorial reasons, upon codification in the U.S. Code, Part C was redesignated as Part A-1.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of covered equipment during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C.6314(a)(2)) The test procedure for walk-in doors is set forth at 10 CFR part 431, subpart R, appendix A, “Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers” (“Appendix A”).

Any interested person may submit a petition for waiver from DOE’s test procedure requirements. 10 CFR 431.401(a)(1). DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 431.401(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

As soon as practicable after the granting of any waiver, DOE will publish in the *Federal Register* a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. 10 CFR 431.401(l). As soon thereafter as practicable, DOE will publish in the *Federal Register* a final rule to that effect. *Id.* When DOE amends the test procedure to address the issues presented in a waiver, the waiver will automatically terminate on the date on which use of that test procedure is required to demonstrate compliance. 10 CFR 431.401(h)(3).

II. Hercules’s Petition for Waiver: Assertions and Determinations

By letter dated July 22, 2020, Hercules, a Senneca Holdings company, (“Hercules”) filed a petition for waiver and interim waiver from the DOE test procedure applicable to walk-in doors set forth in Appendix A. (Hercules, No. 1; “July 2020 petition”)³ Subsequent to the July 22, 2020 submission and in response to questions from DOE regarding characteristics of the specified basic models and suggested values in the requested alternate test procedure, Hercules submitted an updated petition for waiver and interim waiver on October 14, 2020, that provided additional and updated information. (Hercules, No. 2; “October 2020 petition”)⁴

Appendix A accounts for the power consumption of all electrical components associated with each door and discounts the power consumption of electrical components based on their operating time by an assigned percent time off (“PTO”) value. See Appendix A, sec. 4.5.2. Section 4.5.2 of Appendix A specifies a PTO of 25 percent for “other electricity-consuming devices” (*i.e.*, electrical devices other than lighting or anti-sweat heaters) that have demand-based controls, and a PTO of 0 percent for other electricity-consuming devices without demand-based controls. *Id.* In its petition for waiver, Hercules suggested applying a PTO value of 92 percent to the door motors associated with the basic models specified in its petition. Hercules stated that the test procedure’s assumption that the door motor operates for 75 percent of the day (*i.e.*, a PTO of 25 percent) significantly overstates normal motor usage on their powered door models (Hercules, No. 2 at p. 1).

On February 8, 2021, DOE published a notification that announced its receipt of the petition for waiver and granted Hercules an interim waiver. 86 FR 8553 (“Notification of Petition for Waiver”). In the Notification of Petition for Waiver, DOE presented Hercules’s claim that results from testing the specified basic models according to Appendix A are unrepresentative of actual energy usage because of the assigned PTO value. DOE also

³ A notation in the form “Hercules, No. 1” identifies a written submission: (1) made by Hercules; and (2) recorded in document number 1 that is filed in the docket of this petition for waiver (Docket No. EERE-2020-BT-WAV-0027) and available for review at <http://www.regulations.gov>.

⁴ Due to the lengthy list of walk-in door basic models listed in Hercules’s October 2020 petition, DOE is making the complete list publicly available in the relevant regulatory docket. The specific basic models identified in Appendix I of the petition can be found in the docket at <https://www.regulations.gov/docket/EERE-2020-BT-WAV-0027-002>.

summarized Hercules's requested alternate test procedure, which would require testing the specified basic models according to Appendix A, except the PTO value for door motors would be modified from 25 percent to 92 percent for the specified freight and passage doors.

As explained in the Notification of Petition for Waiver, DOE considered the potential range of parameters affecting door motor operating time and confirmed that Hercules's example calculations used operating conditions that yield the most energy consumptive scenarios, specifically, minimum operating speed of the door motor and maximum length or height of the door opening. 86 FR 8553, 8556. DOE validated Hercules's calculations. *Id.* DOE initially determined that the suggested PTO value of 92 percent was more representative of actual energy use than the currently required PTO value of 25 percent. *Id.* DOE also noted that the required use of a PTO value of 92 percent is consistent with waivers previously granted in response to petitions that presented the same issue as in Hercules's petition.⁵ *Id.*

In the Notification of Petition for Waiver, DOE also solicited comments from interested parties on all aspects of the petition and the specified alternate test procedure. 86 FR 8553. DOE received no comments in response to the Notification of Petition for Waiver.

For the reasons explained here and in the Notification of Petition for Waiver, absent a waiver the basic models identified by Hercules in its petition cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by Hercules and concludes that it will allow for the accurate measurement of the energy use of the equipment, while alleviating the testing issues associated with Hercules's implementation of DOE's applicable walk-in door test procedure for the specified basic models.

⁵ See Notice of Decision and Order granting a waiver to Jamison Door (Case No. 2017-009; 83 FR 53460 (Oct. 23, 2018)); Notice of Decision and Order granting a waiver to HH Technologies (Case No. 2018-001; 83 FR 53457 (Oct. 23, 2018)); and Extension of Waiver to HH Technologies (Case No. 2018-011; 84 FR 1434 (Feb. 4, 2019)).

Thus, DOE is requiring that Hercules test and rate specified walk-in door basic models according to the alternate test procedure specified in this Decision and Order, which is identical to the procedure provided in the interim waiver.

This Decision and Order is applicable only to the basic models listed and does not extend to any other basic models. DOE evaluates and grants waivers for only those basic models specifically set out in the petition, not future models that may be manufactured by the petitioner. Hercules may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in this waiver. 10 CFR 431.401(g). Hercules may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 431.401(a)(1).

DOE notes that it may modify or rescind the waiver at any time upon DOE's determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Hercules may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

III. Order

After careful consideration of all the material that was submitted by Hercules, the various public-facing materials (*e.g.*, product literature, installation manuals) for the units identified in the petition, in this matter, it is **ORDERED** that:

(1) Hercules must, as of the date of publication of this Order in the *Federal Register*, test and rate the basic models listed in Appendix I of its October 14, 2020 petition as provided in Docket Number EERE-2020-BT-WAV-0027-0002 with the alternate test procedure as set forth in paragraph (2):

(2) The alternate test procedure for the Hercules basic models identified in paragraph (1) of this Order is the test procedure for walk-in doors prescribed by DOE at 10 CFR part 431, subpart R, appendix A, except that the PTO value specified in section 4.5.2 “Direct Energy Consumption of Electrical Components of Non-Display Doors” shall be 92 percent for door motors. All other requirements of 10 CFR part 431, subpart R, appendix A and DOE's regulations remain applicable.

(3) *Representations.* Hercules may not make representations about the energy use of a basic model listed in paragraph (1) of this Order for compliance or marketing, unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 431.401.

(5) DOE issues this waiver on the condition that the statements, representations, and information provided by Hercules are valid. If Hercules makes any modifications to the controls or configurations of these basic models, such modifications will render the waiver invalid with respect to that basic model, and Hercules will either be required to use the current Federal test method or submit a new application for a test procedure waiver. DOE may rescind or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of a basic model's true energy consumption characteristics. 10 CFR 431.401(k)(1). Likewise, Hercules may request that DOE rescind or modify the waiver if Hercules discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 431.401(k)(2).

(6) Hercules remains obligated to fulfill all applicable requirements set forth at 10 CFR part 429.

Signing Authority

This document of the Department of Energy was signed on March 31, 2021 by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary and Acting Assistant Secretary for Energy

Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on March 31, 2021.

Treena V. Garrett,

Federal Register Liaison Officer,

U.S. Department of Energy.

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